

PART A

Report to: Licensing Committee & Cabinet
Date of meeting: 30 September 2021 & 4 October 2021
Report of: Business Compliance Officer
Title: Community Protection Compliance Policy 2021-2026

1.0 Summary

- 1.1 Community Protection is responsible for ensuring compliance with legislation relating to areas such as anti-social behaviour, environmental protection, housing, food safety, licensing and health and safety at work. The council approves, and from time to time reviews policies on how the section should approach compliance and how legislation should be enforced in a proportionate and consistent manner.
- 1.2 This report sets out the framework of the review of the policy and includes a revised Compliance Policy for members' consideration.
- 1.3 As this Policy encompasses both functions that are the responsibility of both Licensing Committee and Cabinet it needs to be approved by both bodies.

2.0 Risks

2.1	Nature of Risk	Consequence	Suggested Control Measures	Response (Treat, tolerate, terminate, transfer)	Risk Rating (the combination of severity and likelihood)
	Not implementing all suggested amendments to policy beyond	Existing policy contains outdated information. Risk that any future compliance action can be challenged	Adoption of new policy.	Treat	12

September 2021.	and may be difficult to justify or explain. Confusion among residents, visitors and businesses as to what is expected in terms of compliance in Watford.			
Retaining existing policy without any changes.	Existing policy contains outdated information. Risk that any future compliance action can be challenged and may be difficult to justify or explain. Confusion among residents, visitors and businesses as to what is expected in terms of compliance in Watford.	Adoption of new policy.	Treat	12
New Policy, when applied, leads to unfair or unreasonable enforcement	Negative perception of council and regulatory functions, and challenge through the courts.	Ensure Policy is applied correctly	Treat	2

3.0 Recommendations

- 3.1 That the Community Protection Compliance Policy 2021-2026, set out at appendix 1, be approved by the Licensing Committee in relation to functions under its remit.
- 3.2 That the Community Protection Compliance Policy 2021-2026, set out in appendix 1 be approved by Cabinet in relation to functions under its remit.

3.3 That the Head of Community Protection, in consultation with the Head of Legal, be authorised to make minor amendments to the Policy without member approval. These changes are to be restricted to updates of legislation, codes of practice and guidance notes, and are not to include any changes to approach or considerations.

For further information on this report please contact:

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Report approved by: Justine Hoy, Head of Community Protection

4.0 Background

4.1 The council is the primary enforcement body for a range of legislation some of which falls within the remit of Licensing Committee and some which falls within the remit of Cabinet The types of legislation enforced are:

- anti-social behaviour
- environmental protection and pollution
- statutory nuisances such as noise, vibration and light
- infectious diseases
- filthy and verminous premises
- littering, fly-tipping and other environmental crimes
- health and safety at work
- gambling
- alcohol, entertainment and late-night refreshment
- taxis and private hire vehicles
- street trading
- houses in multiple occupation
- charity collections
- food hygiene
- housing standards
- dog fouling and dangerous dogs
- drainage
- animal welfare
- pest control
- abandoned vehicles
- smoke-free legislation.

- 4.2 When exercising those functions the council has the option to use a wide variety of powers including, but not limited to:
- Inspections
 - Closures of commercial and private premises
 - Issuing legally binding notices
 - Interviewing people under caution
 - Issuing fixed penalty notices
 - Issuing Community Protection Warnings and Notices
 - Imposing other financial penalties
 - Withdrawing, amending or refusing permissions
 - Issuing formal cautions
 - Taking civil legal action or instituting criminal proceedings (prosecutions).
- 4.3 This council, and many other councils, delegate these powers to council officers with the exception of review powers under the Licensing and Gambling Acts. The Compliance Policy sets out the expectations of how the various powers are to be exercised by officers on the council's behalf.
- 4.4 When undertaking work to ensure compliance with regulations or legislation the council has responsibilities under the Regulators' Code ("the Code") to ensure that any efforts are risk based and proportionate. This responsibility includes having regard to the Code when determining any general policy or principles about the exercise of specified regulatory functions. Paragraph 6.2(d) of the Code says regulators should publish a policy showing their approach to compliance.
- 4.5 Publication of the Code and Policy makes it clear to everyone involved the operational parameters within which legal powers ought to be exercised. It acts as a safeguard against abuse or over-zealous use of those powers. In addition, Regulators across Hertfordshire have signed up to a voluntary charter, the Better Business for All Charter, which sets out what businesses can expect in relation to compliance services.

5.0 Existing Enforcement Policy, New Compliance Policy and Rationale for Change

- 5.1 The first Environmental Health and Licensing Enforcement Policy was created in 2011. The existing Environmental Health and Licensing Compliance Policy was adopted on 19 September 2016.
- 5.2 Whilst the majority of the current policy is retained in terms of the approach that officers are required to take when dealing with compliance issues, there are a number of changes to the existing policy which are proposed in the new policy and these are outlined in section 6.1. The proposed new policy is attached as Appendix 1.
- 5.3 It should be noted that the council always retains the right to depart from the policy should circumstances require it. Such circumstances may be when the offence is so serious, for example loss of life, or the offender is likely to flee or any other time if justifiable, reasonable and proportionate.
- 5.4 The aim of this policy remains to ensure that the council can show a robust and clear procedure that allows good businesses to grow, does not unnecessarily or disproportionately penalise any person who breaches regulations, and allows officers to take a risk based approach to ensuring compliance. Such a policy safeguards the council as well as those whom the council regulates.

6.0 Key changes to the existing policy

- 6.1 The main changes to the existing policy are as follows:
- Updating information on the government departments responsible for regulatory issues. For example, in January 2018 the Office for Product Safety replaced Regulatory Delivery as part of the Department for Business, Energy and Industrial Strategy.
 - Updating of corporate objectives.
 - Changes to legislation listed in the policy. There have been some legislative changes since the adoption of the previous policy in 2016.
 - The inclusion of further detail concerning the council's procedural safeguards that are in place when investigating and prosecuting offences.
 - Section 6.10 of the existing policy details the specific approach officers will take when dealing with licensing offences, notably, taxi or private hire licensing

offences. Following application of the current approach, particularly in regard to driver licence suspensions, the policy has been redrafted to take account of new safeguarding requirements, comments from the court as a result of cases taken under the existing policy, and in line with new guidelines issued by the Department for Transport in July 2020.

7.0 Public Consultation

- 7.1 This policy was subject to public consultation between 12 July 2021 and 23 August 2021.

The consultation was sent to 197 email addresses connected to a range of organisations including:

- Local Faith Organisations
- Local and National Charities
- Residents Groups
- Council Departments
- Businesses

The consultation was subject to a press release and advertisement via social media.

Details of the consultation were sent by text to holders of taxi and private hire licences highlighting the specific section of the policy relevant to the trade.

Details of the consultation were sent to 1300+ businesses with the assistance of the Economic Development Team.

- 7.2 The council received one detailed response to the consultation. All changes suggested in the response were made except for one concerning the addition of case examples. These can be added following adoption of the policy as they do not change the policy in any way. The changes made to the policy as a result of the response are listed below:

- Addition of further detail concerning equality in section 1.8
- Addition of information on democratic oversight in section 2.2
- Further detail on scope of policy to clarify that it covers more than only 'individuals and businesses'.

- Clarification of section 4.1 to explain why some offences may carry a more serious initial penalty.
- Information on licence reviews.
- Clarifications on investigative and case review procedure in relation to hackney carriage and private hire licensing.
- Rectification of spelling error in section 6.10.8.

8.0 Implications

8.1 Financial

- 8.1.1 The Shared Head of Finance comments that any financial implications will be met from existing budgets

8.2 Legal Issues (Monitoring Officer)

- 8.2.1 The Group Head of Democracy and Governance comments that the legal implications are contained within the body of the report and the proposed policy. As the Policy covers both executive and non executive functions it must be approved by Licensing Committee as well as Cabinet.

8.3 Equality Impact Assessment

- 8.3.1 An impact assessment on the proposed consultation has been undertaken and can be found at appendix 2. The main findings of the EIA are:

On balance the Policy will bring about a positive benefit to Watford by ensuring fair and consistent regulation, improving the opportunity for all to run a business, to visit the town and to live in a community where there is a clearly defined route to reasonable and proportionate enforcement of laws and regulations.

8.3.2 Human Rights

Article 1 of The First Protocol of the Human Rights Act 1998 provides that every person is entitled to the peaceful enjoyment of their possessions and that no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Any regulatory actions are always taken in accordance with the Human Rights Act 1998.

8.3.3 Data Protection Impact Assessment

Having had regard to the council's obligations under the UK General Data Protection Regulation (GDPR) 2018, it is considered that officers are not required to undertake a Data Processing Impact Assessment (DPIA) for this report.

8.4 Staffing

8.4.1 The strategy will not require additional staffing to achieve the stated aims.

8.5 Accommodation

8.5.1 None

8.6 Community Safety/Crime and Disorder

8.6.1 The Policy is concerned with community protection and the functioning of the regulatory services in Watford. The Policy will have a positive impact on increasing community safety, and decreasing incidents of crime and disorder.

8.7 Sustainability

8.7.1 The Policy will support sustainability by ensuring that regulatory action is taken in a way that minimises environmental impact and seeks to pursue issues where it is proportionate to do so.

Appendices

Appendix 1 – Community Protection Compliance Policy 2021-2026

Appendix 2 – Equality Impact Assessment

Background Papers

Environmental Health and Licensing Compliance Policy 2016 – 2021

Regulators Code

Better Business for All Charter